



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0717; FRL-10019-15-OGC]

Proposed Settlement Agreement, Challenge to Clean Air Act

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed settlement agreement; request for public comment

SUMMARY: In accordance with the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed Settlement Agreement to resolve petitions for review filed by the State of Wyoming (“Wyoming”) and PacifiCorp with respect to PacifiCorp’s Wyodak electric generating unit (EGU). In 2014, Wyoming and PacifiCorp filed petitions for review in the United States Court of Appeals for the Tenth Circuit, challenging EPA’s final rule, in which the Agency partially approved and partially disapproved elements of Wyoming’s Regional Haze State Implementation Plan (SIP), and promulgated a Federal Implementation Plan (FIP) to address the disapproved elements. In the Final rule, EPA, *inter alia*, disapproved Wyoming’s determination concerning nitrogen oxide (NO_x) best available retrofit technology (BART) for Wyodak and promulgated a FIP addressing NO_x BART requirements for Wyodak. The Settlement Agreement would resolve Wyoming’s and PacifiCorp’s challenges to the final rule. Under the proposed Settlement Agreement, the parties agree to take certain specified actions.

DATES: Written comments on the proposed settlement agreement must be received by

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-0717, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov/>, including

any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Settlement Agreement” heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3244; email address: hogan.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Settlement Agreement

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2020-0717) contains a copy of the proposed Settlement Agreement.

The electronic version of the public docket for this action contains a copy of the proposed Settlement Agreement, and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are

available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information about the Proposed Settlement Agreement

The proposed Settlement Agreement would resolve Wyoming’s and PacifiCorp’s challenges to the following action: Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; final rule, 79 FR 5032 (January 30, 2014). *See Wyoming v. EPA*, No. 14-9529 (10th Cir. filed March 28, 2014) and *PacifiCorp v. EPA*, No. 14-9534 (10th Cir. filed March 31, 2014).

The proposed Settlement Agreement establishes deadlines by which Wyoming and EPA will take certain specified actions with respect to development of and action on a SIP revision addressing NOx BART requirements for Wyodak. The proposed Settlement Agreement further provides that, if certain conditions are met, Wyoming, PacifiCorp, and EPA agree to move for dismissal of Wyoming’s and PacifiCorp’s challenges to the Final rule. See the proposed Settlement Agreement for specific details.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed Settlement Agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information about Commenting on the Proposed Settlement Agreement

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-0717, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to

EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

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